

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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THOMAS ROCCO,

Plaintiff,

v.

SHERIFF MCMAHILL, *et al.*,

Defendants.

Case No. 2:23-cv-00462-MMD-EJY

ORDER

I. SUMMARY

Plaintiff Thomas Rocco brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at the Clark County Detention Center. (ECF No. 1-1.) On April 24, 2023, this Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before June 23, 2023. (ECF No. 4.) The Court warned Plaintiff that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 1-2.) That deadline expired and Plaintiff did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

Moreover, Plaintiff's mail has been repeatedly returned as undeliverable, and the Court does not have an updated address from Plaintiff. (ECF Nos. 3, 5.) See LR IA 3-1 (stating that a "pro se party must immediately file with the court written notification of any change of mailing address Failure to comply with this rule may result in the dismissal of the action, entry of default judgment, or other sanctions as deemed appropriate by the court").

II. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. See *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

The first two factors, the public’s interest in expeditiously resolving this litigation and the Court’s interest in managing its docket, weigh in favor of dismissal of Plaintiff’s claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

The fifth factor requires the Court to consider whether less drastic alternatives can be used to correct the party’s failure that brought about the Court’s need to consider dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that

1 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court’s
2 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
3 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
4 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
5 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
6 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
7 unless Plaintiff either files a fully complete application to proceed *in forma pauperis* or
8 pays the \$402 filing fee for a civil action, the only alternative is to enter a second order
9 setting another deadline. But without an updated address, the likelihood that the second
10 order would even reach Plaintiff is low, so issuing a second order will only delay the
11 inevitable and further squander the Court’s finite resources. Setting another deadline is
12 not a meaningful alternative given these circumstances. So the fifth factor favors
13 dismissal.


14 **III. CONCLUSION**

15 Having thoroughly considered these dismissal factors, the Court finds that they
16 weigh in favor of dismissal.

17 It is therefore ordered that this action is dismissed without prejudice based on
18 Plaintiff’s failure to file a fully complete application to proceed *in forma pauperis* or pay
19 the full \$402 filing fee in compliance with this Court’s April 24, 2023 order.

20 The Clerk of Court is directed to enter judgment accordingly and close this case.
21 No other documents may be filed in this now-closed case. If Plaintiff wishes to pursue his
22 claims, he must file a complaint in a new case.

23 DATED THIS 29th Day of June 2023.

24 
25 _____
26 MIRANDA M. DU
27 CHIEF UNITED STATES DISTRICT JUDGE
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